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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 165 (PKC)

5 JUAN THOMPSON,

6
7 Plea

8 Defendant.

9 New York, N.Y.

10 June 13, 2017

11 11:55 a.m.

12 Before:

13 HON. P. KEVIN CASTEL,

14 District Judge

15 APPEARANCES

16 JOON H. KIM

Acting United States Attorney for the
Southern District of New York

17 JACOB E. WARREN

Assistant United States Attorney

18 DAVID E. PATTON

Federal Defenders of New York, Inc.
Attorney for the Defendant

20 JULLIAN HARRIS

21 MARK GOMBINER

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(Case called)

THE COURT: Before we proceed with the plea proceeding, I have had tendered to me a plea agreement, and the plea agreement is different than any that I have ever seen in that it presents two alternatives as to how the guideline range would work in this case, one based on the defendant's view and the other based on the government's view. That's somewhat unusual, but what makes it a point of my inquiry before we proceed is the Court is to at some point decide which viewpoint the Court accepts, but today Mr. Thompson will be asked to waive his right to appeal a sentence above the stipulated guideline range which range is not determined as of today's date.

So, for example, I turn around, and let's say I accept the government's view of the world and say, hypothetically, that I impose a sentence at the midpoint of the government's range of 37 to 46 months. Let's say I impose 41 months. Well, under an appellate waiver, since I've adopted that as the stipulated guideline range and the sentence is within that range, then I could see the government's argument that he's waived his right to appeal or collaterally attack that sentence. Then again, I can see the defendant's viewpoint. The Court has made a legal ruling as to which guideline range is correct. Why shouldn't the defendant be allowed to appeal that determination? I'm not certain as to what the defendant's

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1 appellate rights would be under that circumstance, and I don't
2 know how to get the defendant to acknowledge what his rights
3 are, what rights he's giving up, because I don't know what
4 rights he's giving up.

5 Let me hear from the government.

6 MR. WARREN: Yes, your Honor. Under the sentencing
7 range on page 3 of the plea agreement -- and this issue was
8 raised in our office, your Honor. I understand it's rarely
9 done, but it has been done before -- after the Court's
10 determination of the applicability of that sentencing range for
11 the protective order in paragraphs 3 and paragraphs 6 on
12 page 2, whatever the Court's finding is will then be the
13 stipulated guidelines range. So that would then be the base
14 for the waivers that your Honor just mentioned, for the waiver
15 of appeal and for collateral attack.

16 So I think the parties are comfortable that whatever
17 your Honor's determination is on the applicability of that
18 enhancement, which I think we would address in our sentencing
19 papers to the Court as to why it is applicable or, for the
20 defense, why it's not applicable, your Honor's determination
21 would then become the stipulated guidelines range per the plea
22 agreement.

23 THE COURT: But I'm taking a waiver today. I'm not
24 taking a waiver of the right to appeal at some point in the
25 future after this issue has been determined. Obviously, it

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1 hasn't been briefed before me. I don't have anything here
2 which would enable me to make the determination today. But the
3 waiver then will, what, retroactively apply to what the
4 defendant allocutes to today?

5 MR. WARREN: Your Honor, I think the defendant could
6 allocute today that whatever the Court finds, whether that
7 enhancement applies or does not apply, that both parties will
8 be bound by the stipulated guidelines range, whether that's as
9 the government sets out or as the defense sets out.

10 THE COURT: So, in essence, the defendant is waiving
11 his right to appeal a sentence up to 46 months?

12 MR. WARREN: Yes, your Honor.

13 MR. GOMBINER: Judge, that is the defense position as
14 well. I mean, we think we're going to prevail on this issue
15 before the Court, but if we lose, then the guideline range
16 becomes 37 to 46 months. We would not be able to appeal any
17 sentence of 46 months or less, and Mr. Thompson understands
18 that.

19 THE COURT: Is that correct, Mr. Thompson, do you
20 understand that?

21 THE DEFENDANT: I understand it now, yes.

22 THE COURT: All right. Have you discussed this with
23 your lawyers?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: All right. Mr. Thompson, before I can

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1 accept a guilty plea from you, I must satisfy myself that you
2 understand the rights that you would have if this case went to
3 trial and the rights that you're giving up by pleading guilty.
4 In a moment I'm going to have the clerk place you under oath.
5 I'm going to ask you certain questions and inform you of
6 certain rights. If I ask you something or I tell you something
7 and you don't quite understand, please let me know, and I'll
8 put it into different words. Also, if at any time during this
9 proceeding you wish to speak in private with your lawyers, I'll
10 give you the opportunity to do so.

11 Do you understand all that?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: All right. Please stand and the clerk
14 will administer the oath.

15 (Defendant sworn)

16 THE COURT: Mr. Thompson, you're now under oath, and
17 your answers to my questions are subject to the penalties of
18 perjury, or of making a false statement, if you do not answer
19 truthfully, and any statement you make today may be used in any
20 such prosecution. Do you understand all that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: How old are you, sir?

23 THE DEFENDANT: Thirty-two.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: I went to college.

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1 THE COURT: When you say you went to college, did you
2 receive a degree?

3 THE DEFENDANT: Yes.

4 THE COURT: What was your major field of study?

5 THE DEFENDANT: Political science.

6 THE COURT: All right. Are you now or have you
7 recently been under the care of a medical doctor?

8 THE DEFENDANT: No.

9 THE COURT: Have you ever been treated for a mental
10 illness?

11 THE DEFENDANT: No.

12 THE COURT: Have you ever been addicted to any
13 substance, alcohol, marijuana, cocaine, crack, prescription
14 medications, anything?

15 THE DEFENDANT: No.

16 THE COURT: How do you feel today?

17 THE DEFENDANT: I'm slightly nervous; but, you know, I
18 have to deal with the consequences of my actions. That's why
19 I'm here before you today.

20 THE COURT: Is your mind clear?

21 THE DEFENDANT: My mind is indeed clear.

22 THE COURT: You understand what's happening?

23 THE DEFENDANT: I'm fully aware of what's happening.

24 THE COURT: All right. Ms. Harris, any doubts as to
25 the defendant's competence to plead?

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1 MS. HARRIS: No, your Honor.

2 THE COURT: Same question for Mr. Gombiner?

3 MR. GOMBINER: No, your Honor.

4 THE COURT: All right. Based upon Mr. Thompson's
5 responses to my questions and my observations, I find that he
6 is fully competent to enter an informed plea.

7 Now, I've been told that you've signed a waiver of
8 indictment, and I would ask the clerk to place the document in
9 front of Mr. Thompson.

10 Mr. Thompson, have you in fact signed the document
11 that is in front of you?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: Do you recognize that as a waiver of
14 indictment?

15 THE DEFENDANT: I do indeed, yes.

16 THE COURT: Did you discuss it with your lawyers
17 before you signed it?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Did you understand it before you signed
20 it?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: Did you understand that you had the right
23 to have evidence underlying the charges in the superseding
24 information presented to a grand jury of 23 people and to have
25 those people decide by a majority vote whether you should be

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1 charged or not, and that by signing the waiver of indictment,
2 you give up that right? Do you understand all that?

3 THE DEFENDANT: I recognize that, yes.

4 THE COURT: OK. And you understand it?

5 THE DEFENDANT: I understand it, yes.

6 THE COURT: All right. I find that the waiver of
7 indictment is knowing and voluntary, and it is accepted. The
8 superseding information, S1 17 Cr. 165, is deemed filed in open
9 court.

10 Ms. Harris, can you confirm that the defendant has
11 received, read, and reviewed the two-count superseding
12 information?

13 MS. HARRIS: Yes, your Honor.

14 THE COURT: All right. I'm now going to explain to
15 you, Mr. Thompson, the certain rights that you would have if
16 this case went to trial and the rights you would be giving up
17 by pleading guilty.

18 Under the Constitution and laws of the United States,
19 you are entitled to a speedy and public trial by an impartial
20 jury on the charges contained in the charging document, the
21 superseding information. Do you understand all that?

22 THE DEFENDANT: Yes.

23 THE COURT: If there were a trial, you would not have
24 to prove that you were innocent. The government would be
25 required to prove by proof beyond a reasonable doubt each

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1 element of each crime. Before you could be found guilty, a
2 jury of 12 people would have to agree unanimously that you were
3 guilty. Do you understand all of that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: If there were a trial, at every stage of
6 your case, you'd be entitled to be represented by a lawyer, and
7 if you could not afford a lawyer, one would be appointed at
8 public expense. Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: If there were a trial, the witnesses for
11 the government would have to come to court to testify. You
12 would be able to hear them and see them. Your lawyer could
13 question them through cross-examination. Your lawyer could
14 object to evidence offered by the government. Your lawyer
15 could present evidence and could ask the Court to compel
16 witnesses to appear at trial on your behalf. Do you understand
17 all that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: If there were a trial, you would have the
20 right to testify if you chose to do so. You could come up here
21 and take the witness stand. Also, you would have the right not
22 to testify, and no one would be permitted to draw any inference
23 or suggestion of guilt from the fact that you decided not to
24 testify. Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: If there were a trial and the jury found
2 you guilty, you would have the right to appeal that finding.
3 Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Those are the rights that you would have
6 if you went to trial. If I accept a plea of guilty from you,
7 there will be no trial. You will proceed to the sentencing
8 phase in which the Court will determine the punishment to be
9 imposed upon you. Even now you have the right to change your
10 mind. You may plead not guilty to these two charges and
11 proceed to trial on these two charges. Do you wish to plead
12 not guilty and go to trial?

13 THE DEFENDANT: No, I do not.

14 THE COURT: All right. Do you understand that Count
15 One charges you with cyberstalking and carries a maximum term
16 of imprisonment of five years, a maximum term of supervised
17 release of three years, a maximum fine of \$250,000, and a \$100
18 mandatory special assessment? The Court must also order that
19 you make restitution. Do you understand all that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Count Two charges you with conveying false
22 information and hoaxes in violation of federal law and carries
23 a maximum term of imprisonment of five years, a maximum term of
24 supervised release of three years, a maximum fine of \$250,000,
25 and a \$100 mandatory special assessment. Do you understand all

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1 of that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Again, as with Count Two, the Court may
4 require you to make restitution to any person who I find was
5 injured by reason of your conduct. Do you understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Now, with respect to supervised release,
8 there are terms and conditions attached to it, and if you do
9 not live up to those terms and conditions, you can be returned
10 to prison for the full period of supervised release. So say,
11 for example, you receive a prison term to be followed by a term
12 of three years' supervised release, and you live up to the
13 terms of supervised release for two years, but then you violate
14 one of the terms and conditions. You can be returned to prison
15 for a full period of three years. Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: All right. Now, are you a United States
18 citizen?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Among the consequences of pleading guilty
21 is that you give up valuable civil rights, such as the right to
22 vote, to hold public office, to sit on a jury, to possess a
23 firearm, to hold certain other licenses, and to receive certain
24 government benefits. Do you understand all that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Are you serving any other sentence, state
2 or federal, or being prosecuted in any other court for any
3 other crime?

4 THE DEFENDANT: Not that I know of.

5 THE COURT: All right. In sentencing you, I will
6 receive a presentence report prepared by the office of
7 probation that gives me background information and a
8 recommended range of sentence under the sentencing guidelines.
9 After hearing from your lawyers and from the government, I will
10 make my own determination of the correct guidelines range that
11 applies in this case. Even after determining the correct
12 guideline range, I need not follow it and can sentence you all
13 the way up to the statutory maximum. The sentencing guidelines
14 are advisory, and they are one of the factors that the Court
15 takes account of in determining the proper sentence under a
16 statute which is commonly referred to as Section 3553(a). Do
17 you understand all that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: All right. Now, I understand there's a
20 plea agreement between you and the government, and it's set
21 forth in a six-page letter agreement which bears on the front
22 cover, front page, the date of May 31, letterhead of the
23 Department of Justice. And I ask the clerk to place it in
24 front of the defendant.

25 Is that your plea agreement?

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1 THE DEFENDANT: It is indeed, yes.

2 THE COURT: Is that your signature on the last page?

3 THE DEFENDANT: Yes, it is.

4 THE COURT: I notice that it's not dated after your
5 signature. Would you kindly date the document following your
6 signature.

7 Has anyone threatened you or forced you in any way to
8 enter into the plea agreement or to plead guilty?

9 THE DEFENDANT: No.

10 THE COURT: Has anyone given you anything of value or
11 promised you anything to get you to enter into the plea
12 agreement or to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Does the plea agreement contain all of
15 your understandings with the government?

16 THE DEFENDANT: Yes.

17 THE COURT: I want you to know that any prediction,
18 calculation, or estimate that anyone has made to you, including
19 your own lawyers, as to what sentence I may give you is not
20 binding on me, not binding on the Court; and if it turns out to
21 be wrong, you will not be permitted to withdraw your guilty
22 plea. Do you understand that?

23 THE DEFENDANT: I do, yes.

24 THE COURT: Now, your plea agreement has a feature in
25 which you and the government have agreed that you have a

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1 difference of opinion as to the guideline range that may apply
2 in this case. Your lawyers have urged a stipulated guideline
3 range of 30 to 37 months' imprisonment. The government is
4 urging a stipulated guideline range of 37 to 46 months'
5 imprisonment. Under the arrangement that has been made here,
6 each side will have the opportunity to present their view of
7 the stipulated guideline range. If I accept your lawyer's
8 view, then the stipulated guideline range will be 30 to 37
9 months' imprisonment. If I accept the government's stipulated
10 guideline range, then the range will be 37 to 46 months'
11 imprisonment, the stipulated guideline range will be.

12 Under this agreement the government has agreed not to
13 appeal a sentence within the stipulated guideline range which
14 the Court adopts or above that range, but you have agreed to
15 waive your right to appeal a sentence within the stipulated
16 guideline range which the Court finds or below that range. You
17 have waived your right to appeal or collaterally attack a
18 sentence unless it is above the stipulated guideline range, and
19 in that event, the law will only allow you to appeal on the
20 basis that it is unlawful, unreasonable, and/or contrary to
21 law. Do you realize that?

22 THE DEFENDANT: Yes.

23 THE COURT: You understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you discussed this provision with

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1 your lawyers?

2 THE DEFENDANT: Yes.

3 THE COURT: Let me ask the government a question.
4 What happens if the Court concludes the guideline range is
5 different from what either the defense or the government
6 asserts? I have my own obligation to determine the correct
7 guideline range; correct?

8 MR. WARREN: Yes, your Honor.

9 THE COURT: What happens then?

10 MR. WARREN: Your Honor, if the Court determined the
11 guidelines range was different than here, then I think
12 depending on the sentence, if it was below -- if it was above
13 either guidelines range stipulated here in the plea agreement,
14 I believe the defendant wouldn't be bound by the waivers, your
15 Honor.

16 THE COURT: So in that case there would not be a
17 waiver?

18 MR. WARREN: Correct, your Honor.

19 THE COURT: All right. Any basis to disagree with
20 that, Mr. Gombiner or Ms. Harris?

21 MS. HARRIS: No. Thanks.

22 THE COURT: All right. Let me hear from the
23 government. And you should listen to this, Mr. Thompson. This
24 is what the government would have to prove at trial by proof
25 beyond a reasonable doubt.

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1 What are the elements of the crimes charged in Counts
2 One and Two of the indictment and what, in summary, would be
3 the government's evidence if this case proceeded to trial?

4 MR. WARREN: Yes, your Honor. For Count One,
5 cyberstalking, first, that the defendant used an electronic
6 communication service or electronic communication system or any
7 other facility of interstate commerce as charged in the
8 information; second, that the defendant engaged in a course of
9 conduct with intent to kill, injure, harass, intimidate, or
10 cause substantial emotional distress to victim one; third, and
11 finally, that as a result of that course of conduct, victim one
12 experienced substantial emotional distress.

13 For Count Two, 18 U.S.C. Section 1038, the first
14 element is that the defendant engaged in conduct with the
15 intent to convey false or misleading information; second, that
16 the defendant conveyed information under circumstances in which
17 such information may reasonably have been believed; and, third,
18 that such information indicated that an activity has taken, is
19 taking, or will take place that would constitute a violation of
20 Title 18, United States Code, Section 2332a(a), threatened use
21 of a weapon of mass destruction.

22 For the proof of these two crimes, your Honor, the
23 government would offer proof -- testimony from victim one about
24 the false and salacious communications that victim one received
25 from the defendant and that victim one's employer received,

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1 testimony from the victim organizations that the threats they
2 received -- about the threats they received in victim one's
3 name and in Thompson's name, documentary evidence including
4 threatening communications, including search warrant returns
5 from the defendant's email accounts and Twitter account, and
6 finally the defendant's post-arrest statements where he
7 admitted to harassing victim one.

8 THE COURT: All right. Mr. Thompson, please tell me
9 in your own words what you did that leads you to believe that
10 you are guilty of the crimes charged in Counts One and Two.

11 THE DEFENDANT: Well, in 2016, I sent emails and faxes
12 to my ex-romantic partner's employer. These messages contained
13 false and salacious allegations about misconduct on her part.
14 I also sent text messages and emails to her in which I
15 threatened to defame her. I also sent emails to several local
16 community centers in New York and other states. In those
17 emails I falsely claimed that my ex-romantic partner had
18 planted a bomb in these centers. I sent some emails in my name
19 and some in her name. I believed that these false threats
20 would be taken seriously by the community centers and place
21 them in fear for their safety. I committed all these acts with
22 the intent to disrupt my ex-romantic partner's life, to cause
23 her substantial distress. And for this I deeply apologize and
24 plead guilty.

25 THE COURT: Let me ask you, Mr. Thompson. You

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1 described the person as a romantic partner. Was this an
2 intimate partner?

3 THE DEFENDANT: Yes, it was.

4 THE COURT: All right. And did you know what you were
5 doing was wrong and unlawful?

6 THE DEFENDANT: I was aware of my criminal and
7 unlawful behavior, yes.

8 THE COURT: All right. Let me ask the government,
9 what's the proffer on venue?

10 MR. WARREN: Yes, your Honor. Some of the victim
11 organizations that the defendant sent the hoax threats to,
12 including the threats that were in victim one's name and his
13 own name, are located here in Manhattan.

14 THE COURT: All right. Mr. Thompson, is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Does the government agree
17 there's a sufficient factual predicate for a plea of guilty to
18 Counts One and Two?

19 MR. WARREN: Yes, your Honor.

20 THE COURT: Does defense counsel agree there's a
21 sufficient factual predicate for a plea of guilty to Counts One
22 and Two?

23 MS. HARRIS: Yes.

24 THE COURT: Is defense counsel aware of any valid
25 defense that would likely prevail at trial or any other reason

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1 why your client should not be permitted to plead guilty?

2 MS. HARRIS: No, your Honor.

3 THE COURT: Mr. Thompson, do you have any questions
4 for me?

5 THE DEFENDANT: No, I do not.

6 THE COURT: All right. Mr. Thompson, with regard to
7 Count One of the superseding information, how do you plead,
8 guilty or not guilty?

9 THE DEFENDANT: I plead guilty.

10 THE COURT: With regard to Count Two, how do you
11 plead, guilty or not guilty?

12 THE DEFENDANT: I plead guilty.

13 THE COURT: All right. Based upon your responses to
14 my questions and my observations, I find that you know your
15 rights, you know the consequences of pleading guilty, and
16 there's a factual basis for your plea of guilty. Further, I
17 find that the plea agreement was knowingly and voluntarily
18 entered into, including the provisions waiving the right to
19 appeal or attack a sentence under specified circumstances.

20 I'm going to order a presentence investigation and
21 report and direct that no interview of you take place unless
22 your attorneys are present. It's important that you be candid,
23 truthful, and honest with the people who prepare the report.
24 Tell them the good things and the not so good things. The
25 report will be important in my decision on sentencing. Before

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1 the day of sentencing, you will have the opportunity to review
2 that report. I urge you to do so carefully. If there are any
3 mistakes, point them out to your lawyers so they can point them
4 out to me.

5 Sentencing in this case is set for September 15, 2017,
6 at 2:00 p.m. Is there anything further from the government?

7 MR. WARREN: No. Thank you, your Honor.

8 THE COURT: Anything further from the defendant?

9 MS. HARRIS: No, thank you.

10 THE COURT: All right. Thank you all very much.

11 MR. GOMBINER: Thank you.

12 (Adjourned)